PROVINCIAL COURT COMMISSION

PROVINCE OF SASKATCHEWAN

2002 REPORT

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PROVINCIAL COURT COMMISSION

SASKATCHEWAN

REPORT

1. Introduction

1.1 Provincial Legislation

The current Provincial Court Commission was appointed in July 2002 pursuant to section 36 of *The Provincial Court Act, 1998* (*The Act*). This is the second commission appointed under this legislation.

The Commission's jurisdiction is provided for in sections 38 and 51 of *The Act*, which are as follows:

> 38(1) A commission shall inquire into and make recommendations with respect to the following:
>
> (a) the salaries to be paid to:
>
> (i) the chief judge;
>
> (ii) an associate chief judge;
>
> (iii) judges other than the chief judge, associate chief judges and temporary judges; and
>
> (iv) temporary judges;
>
> (b) the remuneration to be paid to judges who perform administrative duties assigned to them pursuant to clause 8 (f);
>
> (c) the allowances to be paid to judges who reside in the Northern Saskatchewan Administration District;
>
> (d) professional allowances;
>
> (e) vacation leave;
>
> (f) pension benefits and additional retirement benefits;
>
> (2) A commission may inquire into and make recommendations with respect to the following:
>
> (a) the support staff, facilities, equipment and security of the court;
>
> (b) the benefits to be provided to judges pursuant made pursuant to clause 6(d).

(3) The salary recommended by a commission cannot be less than the salary being received by the judges on the day on which the report containing the recommendation is submitted to the minister.

(4) No commission regulation respecting pension benefits or additional retirement benefits shall reduce a person's benefit that accrued before the coming into force of the regulation.

51(1) At the request of the minister or the association made at any time during the term of the members of the commission, the commission may inquire into and make recommendations with respect to any matter of significance to the court.

(2) Within six months after the day on which a matter is referred to a commission pursuant to section (1), the commission shall submit a report to the minister and the association containing any recommendations of the commission with respect to the matter.

This Commission's term expires on June 30, 2005.

1.2 The Commission's Membership

The Commission has 3 members. As required by section 36(2) of *The Act*:

(i) 1 is appointed by the Minister of Justice
(ii) 1 is appointed by the Saskatchewan Provincial Court Judges' Association
(iii) These 2 members appoint a chairperson

The Commission members are:

(i) Jack G. Vicq, FCA, Chairperson
(ii) Brian Barrington-Foote, Q.C., appointee of the Minister of Justice
(iii) L. Ted Priel, Q.C., appointee of the Saskatchewan Provincial Court Judges' Association

1.3 The Methodology

Advertisements calling for submissions to the Commission were placed in the Regina LeaderPost, Saskatoon StarPhoenix and the Prince Albert Daily Herald on August 24, 2002. The advertisements indicated that submissions would be received by the Commission to September 20, 2002. In addition, specific notices were written to the Law Society of Saskatchewan and the Canadian Bar Association. Advertisements were again placed, in the same papers, on September 28th and October 5th, 2002 notifying of the date and location of the Commission Hearings.

The Commission was greatly assisted by the written submissions received from:

- Saskatchewan Provincial Court Judges' Association
- The Minister of Justice
- Honourable Chief Judge Gerald T. G. Seniuk
- Canadian Bar Association, Saskatchewan Branch
- Law Society of Saskatchewan
- Saskatoon Criminal Defence Lawyers Association
- Mr. L. F. Bence
- Mr. Calvin Loth

These submissions and replies may be accessed at: **www.provincialcourtcommission.sk.ca/**

The Commission heard oral submissions on October 16th and 17th 2002 in Saskatoon and on October 21st 2002 in Regina.

On November 13th 2002 the Commission traveled to Pelican Narrows to visit and observe the Court. The Commission met informally with the judge sitting at this location.

2. Background and Context

2.1 Previous Judicial Compensation Commissions

There have been three previous Provincial Court Commissions in Saskatchewan:

The Schmeiser Commission reported in 1991
The Irwin Commission reported in 1993
The Bundon Commission reported in 1998 and 1999

Only the Bundon Commission has reported under the current legislation.

The provincial government rejected the recommendations of the Schmeiser and Irwin Commissions. The initial salary recommendation of the Schmeiser Commission was for a salary of $104,000 (October 1, 1990) and the initial salary recommendation of the Irwin Commission was $108,000 (April 1, 1993).

The rejection of the Irwin Commission salary recommendations resulted in the commencement of a lawsuit against the Provincial Government by the Saskatchewan Provincial Court Judges' Association. In June 1997 the Minister of Justice announced that a settlement had been reached in the lawsuit. Under the terms of the settlement, the amount of the salary for provincial court judges was $112,961 effective April 1, 1997.

The first Bundon report dealt with a joint submission from the Minister of Justice and The Saskatchewan Provincial Court Judges' Association (SPCJA) and the recommendations of the Commission followed the 1997 settlement.

The second Bundon report dealt with the period from April 1, 2000 to March 31, 2003. On January 13, 2000 the Provincial government announced that it would accept all of the recommendations of this Commission. The salary recommended by the Commission was $143,000 for the period ending March 31, 2003.

2.2 Judges Reference

The work of this Commission is ultimately founded on the principle of judicial independence. The basis for and constitutional importance of that principle was discussed at length by Chief Justice Lamer in the majority judgment in *Reference re Provincial Court Judges*, [1997] 3 S.C.R. 3, *(Judges Reference)*. In that case, the Supreme Court of Canada held that an independent, efficient and objective judicial compensation commission process is imperative for ensuring judicial independence. The three core characteristics of judicial independence are security of tenure, financial security and administrative independence.

In the *Judges Reference*, Chief Justice Lamer confirmed that the three "core characteristics" of judicial independence also have two "dimensions", being the individual independence of a judge and the institutional or collective independence of the court of which the judge is a member. [*Judges Reference*, paragraph 118] He also explored the relationship between these three core characteristics and two dimensions at some length, noting that financial security has both an institutional and a collective dimension. [*Judges Reference*, paragraphs 119-121] This collective dimension of financial security is, in turn, the foundation on which the Chief Justice builds the requirement for an independent commission interposed between the judiciary and the other branches of government. His findings in this regard are summarized as follows in the Headnote of the *Judges Reference*:

> Financial security has both an individual and an institutional dimension. The institutional dimension of financial security has three components. First, as a general constitutional principle, the salaries of provincial court judges can be reduced, increased, or frozen, either as part of an overall economic measure which affects the salaries of all or some persons who are remunerated from public funds, or as part of a measure which is directed at provincial court judges as a class. However, to avoid the possibility of, or the appearance of, political interference through economic manipulation, a body, such as a commission, must be interposed between the judiciary and the other branches of government. The constitutional function of this body would be to depoliticize the process of determining changes to or freezes in judicial remuneration. This objective would be achieved by setting that body the specific task of issuing a report on the salaries and benefits of judges to the executive and the legislature. Provinces are thus under a constitutional obligation to establish bodies which are independent, effective and objective. Any changes to or freezes in judicial remuneration made without prior recourse to the body are unconstitutional. Although the recommendations of the body are non-binding they should not be set aside lightly. If the executive or legislature chooses to depart from them, it has to justify its decision according to a standard of simple rationality – if need be, in a court of law…

The requirement for an independent body to recommend the level of judicial remuneration is, accordingly, the first component of financial security. The second component is also concerned with process. That is, the judiciary cannot engage in negotiations concerning remuneration with the executive or representatives of the legislature. The third component, on the other hand, is substantive, being the requirement that judicial salaries cannot be reduced or permitted to fall below a "floor" or minimum which might bring judicial independence into question. As noted by the Chief Justice:

> I have no doubt that the Constitution protects judicial salaries from falling below an acceptable minimum level. The reason it does is for financial security to protect the judiciary from political interference through economic manipulation, and to thereby ensure public confidence in the administration of justice. If salaries are too low, there is always the danger, however speculative, that members of the judiciary could be tempted to adjudicate cases in a particular way in order to secure a higher salary from the executive or the legislature or to receive benefits from one of the litigants. [*Judges Reference*, paragraph 192]

As noted by the Minister in his submissions, the *Judges Reference*, the Supreme Court of Canada provided governments with a blueprint for a process to determine judicial compensation in a way that respects judicial independence. The Saskatchewan response was *The Provincial Court Act, 1998.*

2.3 Mandate of the Commission

Although the *Judges Reference* mandated independent review of judicial compensation, it did not specify the exact details of that review. Indeed, the Chief Justice explicitly stated that the exact shape and powers of judicial compensation commissions should be left to the executive and the legislature. [*Judges Reference*, paragraph 167] As noted above, the Chief Justice stated that such commissions must be independent, effective and objective, and confirmed the requirement that judicial salaries not fall below a floor or minimum. He also cited with approval language from *the Draft Declaration on the Independence of Justice* that judicial salaries should be "adequate [and] commensurate with the status, dignity and responsibility of their office". [*Judges Reference*, paragraph 194] He did not list criteria, instead commenting as follows:

> ...I recommend, (but do not require) that the objectivity of the commission be ensured by including in the enabling legislation or regulations a list of relevant factors to guide commission's deliberations. These factors need not be exhaustive. A list of relevant factors might include, for example, increases in the cost of living, the need to ensure that judges' salaries remain adequate, as well as the need to attract excellent candidates to the judiciary." [*Judges Reference,* Paragraph 173]

The Provincial Court Act, 1998 – unlike the legislation in many other jurisdictions - does not list relevant factors that might guide the Commission's recommendations. It states only that the Commission shall "inquire into and make recommendations" as to the matters listed in section 38.

The scope of the Commission's mandate was, however, addressed at some length in both the written and verbal submissions of the Minister of Justice and the Provincial Court Judges' Association. In brief, the Minister of Justice took the position that the Commission should find that it has a restricted mandate, despite

the fact that the *Act* describes the Commission's task only in the most general terms. More specifically, the Minister submitted that the second Bundon Commission went through a rigorous process to set the "base" compensation package for Saskatchewan judges, and

> ...that the task of the current Commission is not to establish a new compensation package. Rather, it is to review the compensation package that has already been established, in light of events since the previous Commission's report, to determine what adjustments are needed to it. [Page 8 Justice Submission]

The Minister argued that this approach was not only consistent with, but required by, the reasoning in the *Judges Reference.* The Minister also relied on the reasoning in *Provincial Court Judges Association of New Brunswick v. New Brunswick (Minister of Justice) (2002), 213 D.L.R. (4th) 329.*

The Saskatchewan Provincial Court Judges' Association, on the other hand, took a more expansive view of the Commission's mandate. The Association did not suggest that the work of the second Bundon Commission or its predecessors should be ignored. It described their recommendations as providing "an informative and helpful backdrop to the deliberations of the Commission". The Association's approach may be best summarized by the following passage:

> ...the work of each Provincial Court Commission is to evaluate all relevant factors to meet legislative and constitutional tests for judicial remuneration and benefits. This arguably requires a fresh analysis each time so that the public can be confident that all issues have been considered in formulating recommendations. [Page 2, Reply to Saskatchewan Justice Submission, Saskatchewan Provincial Court Judges' Association]

In addition to this principled disagreement, the Association and the Minister also differed on the specific factors that should inform the Commission's work, and the weight to be accorded to those factors. The Association, despite its support for a "fresh analysis", proposed a narrow view of what should be considered relevant. It submitted, for example, that the appropriate salary comparators are limited to Queen's Bench salaries and the salaries paid to judges in other jurisdictions. It placed particular emphasis on Queen's Bench salaries, arguing that a judge is a judge and comparing the nature and quantity of the work of our two trial courts. It argued that it is inappropriate to take any account of the salaries of civil servants. It also submitted that the Commission should not take account of the value of benefits such as the judicial pensions, and that it is inappropriate to take account of general economic conditions in Saskatchewan.

The Minister, on the other hand, argued that judicial salaries should be "made in Saskatchewan", and should take account of general fiscal and economic

conditions. The Minister presented evidence in relation to the compensation paid to both public and private employees, the cost of living in Saskatchewan and the overall level of Saskatchewan salaries as compared to other provinces. He also took the position that Queen's Bench salaries are at best of "peripheral" interest to the work of the Commission, and that salaries paid to judges in Ontario and Alberta are also largely irrelevant due to the very different economic and compensation conditions in those wealthiest of Canadian provinces.

The Commission was keenly aware throughout its deliberations of the foundation principle of judicial independence. The Commission's task – as Chief Justice Lamer made very clear - is to make recommendations based on *objective* factors, and it should be "fully informed" before doing so. [*Judges Reference*, paragraph 172] In our view, the interpretation of The *Provincial Court Act, 1998* which best meets these objectives is that the Commission has the jurisdiction to and should consider a broad range of "objective" factors. This approach is also consistent with Chief Justice Lamer's recommendation that legislation contain a "non-exhaustive" list of relevant factors, and that the list might include the need for "adequate" salaries. The notion of "adequacy" is inherently flexible, and invites the Commission to consider all factors it considers relevant in the course of discharging its constitutionally mandated task.

A broad approach to relevance is also consistent with legislation and regulations in other jurisdictions, which the Commission found helpful in understanding this key issue. The Federal process, for example, is governed by the *Judges Act*, which lists the following factors:

- prevailing economic conditions in Canada, including the overall economic and current financial position of the federal government;
- the role of financial security in ensuring judicial independence;
- the need to attract outstanding candidates; and
- *any other objective criteria that the Commission considers relevant.* (emphasis added)

Similarly, section 25 of the *Alberta Provincial Judges Compensation Commission Regulation* (AR 100/2000) contains a list of criteria that is broad and "non-exclusive":

> 25 The Commission, in making the recommendations in its report, must give every consideration to the following criteria:
>
> (a) the constitutional law of Canada;
> (b) the need to maintain the independence of the judiciary;
> (c) the unique nature of the judges' role;

(d) the need to maintain a strong court by attracting highly qualified applicants;
(e) how the Alberta compensation package compares to compensation packages in other jurisdictions, having regard to the differences between these jurisdictions in Canada, including the federal jurisdiction;
(f) the growth and decline in real per capita income;
(g) the need to provide fair and reasonable compensation for judges in light of prevailing economic conditions in Alberta and the overall state of the economy;
(h) the cost of living index and the position of the judges relative to its increases;
(i) the nature of the jurisdiction of the court and masters in chambers;
(j) the current financial position of the government; and
(k) any other factors relevant to the matters in issue.

To summarize, it is the Commission's view that while all of its deliberations must be framed by and fully respect the principle of judicial independence, it is, within that framework, entitled to take account of a wide variety of "objective" factors. Those factors include the history of judicial remuneration, changes in cost of living, prevailing economic and fiscal conditions in Saskatchewan, public and private sector salary comparators both within and outside Saskatchewan, recruitment and retention issues and the unique responsibilities and work environment of Provincial Court Judges.

We do not agree with the suggestion that because judges are not civil servants, public sector compensation is irrelevant, or that the only significant comparator is the salary of other judges. Similarly, we do not agree with the Minister's submission that the jurisdiction of the Commission is limited to a review of the current salary and compensation of Saskatchewan Provincial Court Judges in light of events since those were last determined. This Commission has built its recommendations on the foundation established by the Courts and by its predecessors, which are located within both a provincial and national universe. It has, however, also undertaken a "fresh analysis". In our view, that was both sensible and constitutionally appropriate.

The Commission has accordingly taken account of a wide variety of factors in reaching a recommendation that is intended to result in compensation for Provincial Court Judges that is "adequate [and] commensurate with the status, dignity and responsibility of their offices." [*Judges Reference*, paragraph 194] Certain of these factors are discussed in further detail in Section 3 of this report.

3. Factors Considered

3.1. Judicial Independence

It was common ground between the Minister of Justice and the Association that the work of the Commission must at all times be informed by the principle of judicial independence. That principle was nicely summarized by the Canadian Bar Association [Page 4, Submission], as follows:

> Judicial independence is a foundation of our democracy because it is an essential component of the rule of law. We depend on democratically elected legislators to enact our laws. We depend on the executive, chosen from those legislators, to enforce those laws. We depend on the judiciary to interpret those laws. To ensure there is a primacy of the rule of law – that our nation is governed by laws as opposed [to] individuals – we need objective guarantees that our judiciary will interpret the laws independently from the other two branches of government and free from any other outside influences.

As noted above, the Supreme Court of Canada has confirmed that financial security is one of the three core characteristics of judicial independence, and that financial security demands that judicial salaries not fall below "a basic minimum level of remuneration which is required for the office of a judge". [*Judges Reference*, paragraph 135] None of the parties argued that this "floor" was at issue in this proceeding. The Commission agrees.

The Commission notes, however, that Provincial Court salaries have not changed in three years. That has resulted in an erosion of Judges' salaries due to inflation. That factor has influenced our recommendations. As noted in the *Judges Reference,* judicial compensation commissions should reconvene at least every three to five years to guard against the possibility that government inaction might lead to a reduction of judicial salaries due to inflation.

The Commission has also taken account of the need to ensure that judicial salaries remain adequate and commensurate with the status and dignity of their office.

3.2 Unique Role and Responsibility of the Provincial Court Judge in our Society

We have been impressed by the quality of the Provincial Court in Saskatchewan. We have heard and seen that the Court is innovative, hard working and productive. We were provided with detailed information on the activity of two judges situated in Saskatoon and became aware of the variety of important and complex issues faced by these judges in their caseloads. We are aware that Courts have, in part due to the *Charter of Rights and Freedoms*, faced increasingly complex decisions and increased public scrutiny.

We received information in relation to the continuing and rapid evolution of the role and jurisdiction of the Provincial Court. The Association, for example, led evidence regarding provincial and federal legislative changes that have impacted and will impact the activity of the Court. [Pages 6-14, SPCJA Presentation] We were provided with statistics that show substantial increases in caseloads and appearances and comparisons with the Court of Queen's Bench criminal jurisdiction over time. [Pages 16-18, SPCJA Presentation]. In 1998 the Provincial Court caseload was 457,000 cases – in 2001 the number had increased to 576,000 cases. This represents an increase of 26% in that period of time. On a purely numeric basis, the Provincial Court is responsible for the vast majority of criminal cases [Page 19, SPCJA Presentation], and indeed, for the great majority of civil trials [Page 22, SPCJA Presentation]. Indeed, it is fair to say, as noted by the Saskatoon Criminal Defence Lawyers Association at page 4 of their submission, that

> ... the role of the Provincial Court in today's justice system is far reaching and extremely important. For most people, the first and only court they will ever have any contact with is the Provincial Court.

The Commission wishes to note that it has not considered whether the Provincial Court carries a greater or lesser work load or responsibility than Queen's Bench. We would consider such a comparison to be inappropriate. Further, and even if such a comparison was in order, the statistical and other evidence provided to the Commission fell far short of providing the basis for a reasoned comparison.

It is apparent that there are certain benefits to judicial office. Those benefits include respect, interesting and important work and compensation in excess of many of their fellow citizens. However, those benefits reflect and are based on the unique burdens and characteristics of the judicial role. Certain of those characteristics are described above. Our Provincial Court commonly deals with a very large volume of work, and makes decisions which are of crucial importance to those who appear before them and to society as a whole. They must, by the nature of their role, carry this burden alone, and be subject to constant public scrutiny. Further, the SPCJA brought the following quote from the report of the 1999 Nova Scotia Court Tribunal to our attention, which nicely summarizes certain other features of the judicial life:

> The Tribunal recognizes that sitting as a Judge of the Provincial or Family Court is a unique position. It is generally an appointment for life. Although it is not impossible, it would be very difficult for a Judge to retire and to attempt to resume private or public practice. There is no opportunity to earn additional income and, in fact, Judges are specifically prohibited from doing so. There is no opportunity for advancement as a Judge and the salary, once received, is a salary subject to review which applies throughout tenure. Counsel for the Association described the

position as being "a one way street" and that is an apt description of the position once accepted. Accordingly, Judges must be protected to assure that they are fairly and adequately dealt with.

[Page 28, SPCJA Submission, from page 3 of Nova Scotia 1999 report]

The Commission has taken account of all of these factors.

3.3 Need to Attract Excellent Candidates

There are a number of factors or combination of factors that might make an appointment to the Provincial Court attractive to an individual. They include:

- The nature of the work;
- The prestige associated with being a judge;
- The security of the position; and,
- The salary and benefits package.

As noted above, the need to attract excellent candidates was specifically noted by Chief Justice Lamer in the *Judges Reference*, and has been the subject of a good deal of attention by other commissions. The 1993 Report of the Saskatchewan Provincial Court Commission, for example, stated as follows:

> ...it is the Commission's view that lawyers paid at the higher end of the income range also include some of the best candidates for the bench. The Commission would not want to award a salary range that excludes some of the legal profession's best candidates for the judiciary simply because the salary is not attractive to the individual. [1993 Report of the Saskatchewan Provincial Court Commission, page 7]

This Commission is also convinced that the total compensation provided to Provincial Court Judges must be at a level that will attract, motivate and retain the best candidates. Both the Minister of Justice and the SPCJA agree. Further, both agree that the Provincial Court has attracted very able candidates. One of the purposes of this Commission's recommendations is to ensure that this continues to happen.

The SPCJA points out [Page 41, Submission] that both the Provincial Court and the Queen's Bench court are drawn from the same bar or the same candidate pool and consequently compensation closer to that paid to Queen's Bench Judges is necessary to attract the most able candidates. They suggested that without a "closing of the gap", the better candidates will go to the Queen's Bench. This was an important theme in both their written and verbal submissions. As noted above, on the other hand, the Minister took the position [Page 1, Reply on Behalf of the Minister of Justice] that the salary level of federally appointed judges was,

> ...at best, of peripheral interest to the Commission is establishing an appropriate compensation package for Saskatchewan's Provincial Court judges.

Additionally, the Minister stated that there is no difficulty in attracting excellent candidates. The Commission received evidence [page 12, Submission on Behalf of the Minister of Justice] that there are currently 41 names on the Judicial Council's approved list for appointments to the Provincial Court. Since the last Commission hearings (1999) seven new judges have been appointed – four of whom came from private practice and the remainder from the Legal Aid Commission or from various positions in Saskatchewan Justice. An eighth appointment was made in the course of our deliberations. That appointee was a private practitioner with more than 20 years at the bar.

Current evidence regarding income of lawyers in the private bar is scarce. Both SPCJA and the Minister of Justice referred to income data appended to the Federal Spring 2000 Commission Report in their verbal submissions or summaries. This data is from 1997 income tax information and relates to lawyers between the ages of 44 and 56 earning more than $50,000. In Saskatchewan private practitioners at the 75th percentile of the population described above earned $163,000. [Page 44, Judicial Compensation and Benefits Report, May 2000].

The Commission has concluded that this is an important segment of the pool of qualified candidates and the salary level for Provincial Court Judges should take this into account. Further, and although no reliable current data is available, the Commission is also prepared to assume that the income of high income earners in the private bar has significantly increased since 1997. On that basis, we conclude that there are a significant number of private practitioners in Saskatchewan earning in excess of $200,000 per year.

To make a meaningful comparison of Provincial Court Judges' compensation with the incomes of private practitioners, the Commission considered not only salary, but also the major component of the benefit package – the pension plan. It is our view that the Judges' pension plan would be a significant consideration to many potential appointees. The Minister of Justice presented evidence that the Pension/retirement benefits presently provided to Provincial Court Judges adds approximately 35% to their compensation package.

3.4 National Standards of Judicial Remuneration

The Commission was presented with varying data on what was purported to be "Average Judges' Salaries". The variation in the amount calculated was a consequence of:

- Whether or not Saskatchewan or certain other jurisdictions (such as Ontario, Alberta and Nunavut) were included in the calculation;
- The appropriate year of the calculation;
- The treatment of salaries which are presently under review or appeal;
- Whether or not federal courts were included in the calculation; or
- Whether or not a weighted average was used.

As of April 1, 2002 the Minister calculates the average Provincial Court Judge's salary to be $157,200. The SPCJA estimated that the April 1, 2003 average salary will be $173,000. If Nunavut (federal court appointments) were excluded from this calculation the average (excluding Saskatchewan) would be $169,400. At April 1, 2003, the salary of Queen's Bench Judges will be $216,000.

The following table shows the actual April 1, 2002 salaries and those projected by the SPCJA at April 2003:

Province or Territory	**April 1, 2002**	**Projected at April 2003**
British Columbia	$158,000	$161,250
Alberta	170,000	170,000
Manitoba	144,000	144,000
Ontario	175,999	179,167
Quebec	148,320	188,000
New Brunswick	146,744	174,000
Nova Scotia	157,000	160,140
Prince Edward Island	152,068	170,000
Newfoundland	142,700	159,181
Yukon	172,000	178,000
Northwest Territories	176,784	179,612
Average	**$157,200**	**$169,400**
Saskatchewan	**$143,000**	**To be determined**
Federal Judges	**$210,941**	**$216,000**

As indicated above, the salaries in the April 2003 column have been estimated based on a number of assumptions. It has been assumed, for example, that New Brunswick Provincial Court judges will succeed in their challenge of their

Government's rejection of the recommendations of their Commission. This approach is based on the SPCJA's argument that this Commission should attend to the reports of Commissions, rather than the salaries set in response to those reports. There are also assumptions made in relation to jurisdictions where there will be cost of living or similar adjustments.

It is the Commission's view that the salaries paid to other judges are an important comparator, and that some jurisdictions offer a better comparison to Saskatchewan than others. It is also of the view that although averages are by no means conclusive, they are of interest. The Commission believes the best approach to the calculation and consideration of national averages – given the inevitable uncertainties that will arise - is to consider a range of possible outcomes. On the basis of the evidence provided by the parties, it appears that the average in April 2003 (excluding Saskatchewan) will likely be in the range of $166,000 to $175,000. If Nunavut is excluded, that range will likely be between $162,000 and $172,000. (The high end of these ranges recognizes possible adjustments discussed but not incorporated in the previous table.)

By including only provinces with similar financial capacities, as measured by the federal equalization program, the average will likely be in the range of $153,000 to $165,000. (Includes: British Columbia, Manitoba, Quebec, New Brunswick, Nova Scotia and Newfoundland. PEI is excluded because it adopts the national average.)

In the past 10 years, Saskatchewan Provincial Court Judges' salaries have been as low as 57.8 % of federal judges and as high as 72.2%. The high was reached in 2000. The ratio has been as high as 82.4% (1982); the low was the 57.8% in 1992.

3.5 Fiscal Capacity of the Province of Saskatchewan

The Commission, in its deliberations, discussed the fiscal capacity of government. Both the SPCJA and the Minister of Justice presented information regarding this issue.

The Minister of Justice [Pages 2-5, Appendix A, Professor Tompkins, Submission] notes that the Saskatchewan economy has under-performed recently. This is primarily the result of continuing drought and the consequences of that on cash farm receipts. Professor Tompkins also noted that most forecasters expect a gradual recovery in the near term.

A witness for SPCJA, Mr. D. Kalesnikoff, indicated that the impact of judges' salaries on the total expenditures of the Government of Saskatchewan is relatively small – accounting for less than 0.1% of total expenditures. [Page 7 Presentation of Mr. Kalesnikoff]. Further evidence was introduced that indicated that the ratio

of government debt to Saskatchewan's gross Domestic Product has decreased and is expected to be 22.8% at March 31, 2003. It was argued that this is an indication of a stronger economy and better debt management by the government.

The most recent quarterly report from the Province (First Quarter 2002-2003) indicates that Saskatchewan remains on target for its ninth consecutive balanced budget. However, this is only possible with additional transfers from the Fiscal Stabilization Fund. Current economic conditions have resulted in revenue decreases and expenditure increases. Expenditure increases (over 2002-03 Budget) have taken place or are expected in the Departments of Agriculture, Environment and Health.

During our deliberations, the Minister of Finance, Saskatchewan, released the province's Mid-Year Report. This Report indicated the above trend was continuing and at the mid-point of the year an additional transfer of about $100 million from the Fiscal Stabilization Fund would be necessary to balance the 2002-03 budget. Own source revenue is higher than forecast; however, decreases in transfers from the federal government more than offset these higher revenue amounts.

Overall, the information available to us suggests that the financial position of the province is weakening and a continuation of expenditure pressures, decreases in federal transfers and the amount available in the Fiscal Stabilization Fund may result in deficits in the General Revenue Fund in the near future. Indeed, Summary Financial Statements indicate that this is already the case. [Saskatchewan Public Accounts, 2001-2002]

3.6 Increases in Cost of Living

The current salary for Provincial Court Judges of $143,000 became effective April 1, 2000. The *Judges Reference* confirms that the Commission should look at changes in the cost of living since that salary was set in December 1999. The Commission has accordingly attempted to measure and estimate the change in the Consumer Price Index in Saskatchewan for the three-year period ending December 31, 2002.

On the basis of Statistics Canada Data and the Saskatchewan Bureau of Statistics, we estimate that the average annual CPI change will be between 2.0% and 2.2%. This is consistent with the Minister's submission. [Page 6, Appendix A, Submission]

3.7 Other Salary Comparators

We made reference to estimated incomes in the private bar in Section 3.3 above. We were provided with additional salary information for various categories of employees. Like the information available with respect to private bar incomes, this information was also out of date. Generally, the data showed that

> ...compensation levels in Saskatchewan are lower than Canadian averages for highly educated individuals as well as for a broad array of professional and other occupations." [Professor Tompkins, Appendix A, Page 10, Submission on Behalf of the Minister of Justice]

Data was provided that summarized recent salary settlements in the Saskatchewan public sector. The most recent settlements for persons in the executive government group shows average annual settlements (excluding pay equity adjustments) of about 2.5%. [Professor Tompkins, Appendix A, Page 13].

As noted above, the SPCJA objected to the relevance of this data. For example, the SPCJA Reply states as follows:

> The SPCJA does not know what the instructions were for Professor Tompkins to conduct his study so perhaps he was not advised as to the constitutional requirements of judicial independence and conducted a study of wage comparisons without knowing that judges are not supposed to be compared to civil servants." [Page 6, Reply to the Saskatchewan Justice Submission]

This issue is dealt with at length in section 2 above. As is there noted, the principle of judicial independence has informed all of our deliberations. That principle does not preclude and has not precluded the Commission from considering a broad range of public and private income data.

4. Commission Decisions

The Commission is of the unanimous view that Provincial Court Judges' salaries and benefits should be as follows:

4.1 Salaries

As discussed above, the Commission has considered and weighed a universe of factors in making the following recommendations. These factors included circumstances unique to Saskatchewan, as well as judicial remuneration in other jurisdictions. It is fair to say that, in our opinion, salaries of Provincial Court judges in other jurisdictions are more relevant than salaries of judges of the Court of Queen's Bench.

We have decided to recommend a salary effective April 1, 2003 and to recommend an adjustment for each of the subsequent two years. This adjustment will be based on changes in the Saskatchewan Consumer Price Index. This will effectively deal with the erosion of purchasing power when salaries are fixed for a three-year period.

4.1.1 Judges other than the Chief Judge, Associate Chief Judges and Temporary Judges

The Commission recommends that the base salary for judges other than the chief judge, associate chief judge, and temporary judges shall be $158,000 for the period April 1, 2003 to March 31, 2004.

For the period beginning April 1, 2004, this amount should be adjusted by the increase in the Saskatchewan Consumer Price Index (CPI) as measured between January 1, 2003 and December 31, 2003. This adjustment shall never be less than zero.

For the period beginning April 1, 2005, the previous year's salary shall be adjusted by the Saskatchewan CPI as measured between January 1, 2004 and December 31, 2004. This adjustment shall never be less than zero.

4.1.2 Chief Judge

In each of the years, the Commission recommends that the Chief Judge receive a salary of $10,000. greater than the amounts determined in Section 4.1.1.

4.1.3 Associate Chief Judges

In each of the years, the Commission recommends that the Associate Chief Judge receive a salary of $5,000. greater than the amounts determined in Section 4.1.1.

4.1.4 Administrative Judges

In each of the years, the Commission recommends that Administrative Judges receive a salary of $3,000. greater than the amounts determined in Section 4.1.1.

4.1.5 Temporary Judges

The Commission recommends that the per diem rate for temporary judges for the period April 1, 2003 to March 31, 2004 should be as follows:

$650. per day
$325. per one-half day

For subsequent years, these amounts shall be adjusted in the same manner as described in Section 4.1.1.

For the purpose of this section, it is recommended that the adjusted per diem in the last two years be rounded up to the nearest dollar.

4.2 Pensions

4.21 A True Rule of 80

The Commission is of the view that the current pension arrangements that provide for a full 70% pension to a judge who is at least 58 years of age at retirement, with at least 18 years of service and a combination of age and years of service equaling 80, are appropriate. The SPCJA asked the Commission to recommend that a true rule of 80 (no minimums) be implemented. The Commission agrees with the Minister of Justice that such a change would lead to inequitable treatment among judges and no change is recommended.

4.2.2 Indexing of Pensions

The SPCJA submission asked the Commission to recommend an automatic annual adjustment to all pensions and survivors' allowances based on an amount equal to the Consumer Price Index of Saskatchewan. Currently, retired judges' and survivors' pensions in Saskatchewan are adjusted on an *ad hoc* basis. Available information suggests that this policy has resulted in an adjustment at the rate of one-half of increases in

CPI in most years. The SPCJA believes that the current arrangement may raise concerns regarding financial security and judicial independence. [Pages 50 and 51, SPCJA submission]

The Minister of Justice [Pages 23, 25, 25 Reply on Behalf of the Minister of Justice] has argued:

- The Commission does not have authority to recommend enhancements to supplementary pension allowances for former judges or surviving spouses; and

- That fixing the adjustment at the full amount of the Consumer Price Index for Saskatchewan would be a substantial enhancement to an already generous pension plan.

The Commission agrees that its authority does not extend to retired judges or surviving spouses. However, it does recommend changes to the supplemental pensions allowances of judges that retire on or after April 1, 2003.

The recommendations are:

- That relevant legislation and regulations be amended to provide retiring judges with an enshrined right to an adjustment based on the increase in Saskatchewan Consumer Price Index. The adjustment will be applied at the beginning of April of each year and the first adjustment will be made to pensions on April 1, 2004;

- That the enshrined right be for 75% of the increase in the Saskatchewan Consumer Price Index;

- That the maximum adjustment be 75% of 5% plus 50% of CPI increases in excess of 5%;

- That the minimum adjustment be 0%;

- Changes in the CPI will be measured between January 1 and December 31 of each year and will be as published by Statistics Canada for that period.

As noted above, the Commission agrees that its jurisdiction does not extend to retired judges or those that will retire prior to April 1, 2003. Nevertheless, the Commission respectfully suggest that the Minister may wish to consider recommending to his colleagues that *The Provincial Court Act, 1998,* be amended to require that former judges' and survivors'

pensions be adjusted at the same time and at the same rate as superannuation allowances are adjusted under section 36.1 of *The Superannuation (Supplementary Provisions) Act.*

4.2.3 Establishing a Fair Capital Amount in a Judge's Pension Account

The SPCJA submission [Pages 51 and 52] asked the Commission to recommend that pension payments to retired judges be made for a guaranteed period of 10 years from the date of retirement. Currently, payments stop with the death of the judge and their surviving spouse. The SPCJA suggests that this amendment be introduced at the cost of the government.

The Minister, on the other hand, [Page 26 Reply on Behalf of the Minister of Justice to the Provincial Court Commission] suggested that the proposal be implemented by providing a judge with the right to elect an optional form of pension of equal actuarial value which provided a period of guaranteed payments.

The Commission recommends that optional forms of pensions for retiring judges be presented to retiring judges (and those contemplating retirement). The options available should include both the amount of the survivor's pension (for example, 60%, 70% and 75%) and the length of the guaranteed period (for example, 0, 5, 10, 15 years).

The options would require amendments to both the *Pension Plan Regulations* and *Compensation Regulations*. A retiree that chooses a 60% survivor's pension and 0 years guarantee would receive the same as the current pension benefits. Other options would result in smaller monthly pension payments.

4.2.4 Early Retirement Penalty

The SPCJA submission [Page 52] pointed out that there is an inconsistency between section 13(1) of the *Compensation Regulations* and section 5 of the current *Pension Plan Regulations*. *The Pension Plan Regulations* provide for a greater penalty for early retirement than is contemplated in the *Compensation Regulations*. The Minister of Justice did not object to this proposal from SPCJA. [Page 27, Reply on Behalf of the Minister of Justice]

The Commission recommends that section 12 of the *Compensation Regulations* and section 5 of the *Pension Plan Regulations* be amended so that the early retirement penalty is based on age 58 rather than age 60.

4.3 Extension of Health and Dental Coverage for Judges and Their Families into Retirement

The SPCJA asked the Commission to recommend [Page 51, SPCJA submission] that health benefits be extended into retirement. The Minister of Justice, in his reply, [Page 19] indicated that the Public Employees Benefits Agency (PEBA) has explored the issue of voluntary medical coverage in retirement for former judges. Depending on the coverage and the deductibility, premiums for such a plan would range from $385 to $1852 per year.

The Commission recommends that this or other voluntary plans be explored fully and a proposal be presented to the SPCJA for consideration with the understanding that it would be funded by premiums paid by former judges.

4.4 Annual Leave and Sabbaticals

4.4.1 Annual Leave

The SPCJA asked that the Commission to recommend that the holiday leave be extended from 30 days to 40 days.

The Commission is of the view that the current annual leave is appropriate when compared to national and provincial standards and does not recommend an increase in the number of days.

4.4.2 Sabbaticals as Education Leave

The SPCJA asked the Commission to recommend that a sabbatical program for Judges of the Provincial Court be implemented. The SPCJA would like the sabbatical program to be used for ongoing judicial education. [Page 53, SPCJA Submission]

The Minister is of the view that the current deferred salary plan provides an appropriate form of leave for Provincial Court Judges. [Pages 18, 19 Reply on Behalf of the Minister of Justice]

The Commission agrees with the Minister that the current arrangements meet the needs for continuing education.

4.5 Professional Allowances

The Commission did not receive any representations regarding changes to professional allowances and none is recommended.

4.6 Northern Judges' Travel and Living Allowances

The SPCJA asked the Commission to recommend that the northern allowance be expressed as a percentage of salary and that the Northern Judges be allowed three trips south a year for medical and dental appointments. [Page 55, SPCJA Submission]

The Minister, in his reply, agreed with fixing the allowance as a percentage of salary; however, indicated that the Northern Employment Medical/Dental Leave policy applies to judges and should meet their needs. [Page 17, Reply on Behalf of the Minister of Justice] The SPCJA indicated that the current arrangement was not acceptable. [Page 55] No further explanation was given during our Hearings.

The Commission recommends that the northern allowance be fixed at 5% of salary. In addition, it recommends that the Northern Employment Medical/ Dental policy be extended to Judges resident in Meadow Lake so that it is consistent with the northern allowance.

If there are outstanding issues respecting the Medical/Dental policy the Commission orders that they be brought to the attention of the Executive Director of Court Services to be resolved. If either party is of the view that this would violate the principle of *Reference re Provincial Court Judges* to avoid direct negotiation, then the Commission will remain seized of the matter and will hear submissions regarding Northern Employment Medical/Dental policy.

4.7 Canadian Custom and Revenue Agency (CCRA) Pension Issues

The Minister of Justice has identified four technical amendments requested by CCRA so that the Provincial Court Judges' pension plan is in compliance with the *Income Tax Act* (Canada).

4.7.1 Indexing of Pension Benefits

The CCRA has requested that the amount of the increases made, from time to time, to retirement benefits because of increases in the CPI be limited to the amount of the increase in CPI.

We have recommended above that these adjustments become an entitlement and the maximum amount of our recommendation would be 75% of CPI – consequently, if this recommendation were accepted, no further action is required with respect to Judges retiring subsequent to March 31, 2003.

For Judges retired before that time, the Commission recommends that section 27 of *The Provincial Court Act, 1998* be amended to state that the

increase in pension benefits cannot exceed the increase in the Consumer Price Index.

4.7.2 Contributions

CCRA has requested amendments to section 28 of *The Provincial Court Act, 1998,* to clarify that contributions to the pension plan may not exceed the maximum allowed by the *Income Tax Act* (Canada). The Commission recommends that amendments be made to this section that will:

(a) indicate that the obligation to contribute 5% set out in subsection (1) is subject to the maximum contribution level permitted by the *Income Tax Act* (Canada); and

(b) indicate that a Judge who is granted a leave of absence may make contributions to the plan during that leave of absence only where permitted by the *Income Tax Act* (Canada).

4.7.3 Age 69 Requirement

Unless the Minister responsible for CCRA agrees otherwise, all pensions must commence to be paid by the end of the calendar year in which a pension plan member attains the age of 69 years. Section 13 of *The Provincial Court Act, 1998* provides an opportunity for the chief judge to extend the date of retirement from age 65 years to age 70 years.

The Minister [Pages 23, 24, Submission] identifies a number of options for identifying this conflict.

The Commission recommends that the Minister of Justice seek approval of the Minister responsible for CCRA to commence payment of a pension, to judges who remain in office past the end of the calendar year in which they attain the age of 69 years, on the date that the judge actually retires.

If such approval is granted, the Commission recommends that *The Provincial Court Compensation Regulations* be amended to provide for such judges to receive credit for the additional service through additional retirement benefits payable pursuant to those regulations.

If approval of the Minister responsible for CCRA is not granted, then this Commission will hear submissions as to other alternatives.

4.7.4 Pre-retirement Death Benefits to Surviving Spouses

The *Income Tax Act* (Canada) states that a pre-retirement death benefit payable to a surviving spouse may not exceed 66 2/3% of a pension plan member's lifetime pension accrued to the date of death.

These benefits are dealt with in both *The Provincial Court Pension Plan Regulations* and *The Provincial Court Compensation Regulations*. The portions of the pension plan that comply with the *Income Tax Act* (Canada) are in *The Provincial Court Pension Plan Regulations*. Generally, the provisions in section 6 of these regulations provide for a maximum pension of 42% of the average of the judge's highest three years' salary, if the judge dies while holding office.

The 42% was derived in the following manner:

> Normal full retirement benefit = 70% of a certain salary;
> Surviving spouse allowance = 60% of normal full retirement benefit;
> Therefore, surviving spouse allowance is 42% (70% * 60%) of a certain salary.

The concern of CCRA is that the expression currently in section 6 is not expressed as a percentage of the member's pension.

The Commission recommends that section 6 of *The Provincial Court Pension Plan Regulations* be repealed and the following substituted:

> Where a judge dies while holding office leaving a spouse, the spouse is entitled to receive during the spouse's lifetime a pension equal to 66 2/3 % of the amount of pension that the judge would have received pursuant to section 4 if the judge had retired on the day on which the judge died.
>
> [Appendix C, Submission on Behalf of the Minister of Justice]

4.8 Costs

The SPCJA proposed that this Commission has jurisdiction to award costs. [Page 56, SPCJA submission]. The Minister of Justice advised that an arrangement is in place to address the Association's costs. The arrangement dates back to 1998 and provides for an amount of $25,000 per commission. [Appendix F to Minister of Justice's reply]

The Commission is of the view that it does have the jurisdiction to award costs. However, the Commission orders that the counsel for the Government and Judges attempt to reach agreement on the appropriate costs. If counsel cannot reach an agreement on costs, or if counsel is of the view that such negotiation would violate the principle of *Reference re Provincial Court Judges* to avoid direct negotiation, then the Commission will remain seized of the matter and will hear submissions as to costs.

5. Unanimous Decision

The foregoing is the unanimous decision of the Commission.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at the City of Saskatoon, in the Province of Saskatchewan, this 30th day of December 2002.

JACK G. VICQ, FCA
Chairperson

BRIAN BARRINGTON-FOOTE, Q.C.
Minister's Nominee

L.TED PRIEL, Q.C.
Judges' Nominee

COMMISSION ORDER

The Provincial Court Commission, pursuant to Part IV of *The Provincial Court Act, 1998*, makes *The Provincial Court Compensation Amendment Regulations, 2002* in accordance with the attached Schedule.

Dated at the City of Saskatoon, the 30th day of December, 2002.

Chairperson
Provincial Court Commission

Certified True Copy

Chairperson
Provincial Court Commission

SCHEDULE

Title

1 These regulations may be cited as *The Provincial Court Compensation Amendment Regulations, 2002*.

R.R.S. c.P-30.11 Reg 2 amended

2 *The Provincial Court Compensation Regulations* are amended in the manner set forth in these regulations.

Section 2 amended

3 The following clause is added after clause 2(a):

"(a.1) **'consumer price index'** means the annual average of the all-items Consumer Price Index for Saskatchewan for a calendar year, as released by Statistics Canada".

New section 3

4 Section 3 is repealed and the following substituted:

"**Salaries**

3(1) For the purposes of this section, the annual increase in the consumer price index is the value C calculated in accordance with the following formula:

$$C = (CPI_1 \div CPI_2) - 1$$

where:

CPI_1 is the consumer price index for a specified calendar year; and

CPI_2 is the consumer price index for the year immediately preceding the year for which CPI_1 is determined.

(2) A judge is entitled to be paid an annual salary in the amount of:

(a) $143,000 for the period commencing on April 1, 2000 and ending on March 31, 2003;

(b) $158,000 for the period commencing on April 1, 2003 and ending on March 31, 2004;

(c) for the period commencing on April 1, 2004 and ending on March 31, 2005, in the amount S_1 calculated in accordance with the following formula:

$$S_1 = \$158,000 + (\$158,000 \times C)$$

where the value of C is calculated using the consumer price index for the 2003 calendar year as CPI_1 and the consumer price index for the 2002 calendar year as CPI_2;

(d) for the period commencing on April 1, 2005, in the amount S_2 calculated in accordance with the following formula:

$$S_2 = S_1 + (S_1 \times C)$$

where:

(i) S_1 is the amount S_1 calculated pursuant to clause (c); and

(ii) the value of C is calculated using the consumer price index for the 2004 calendar year as CPI_1 and the consumer price index for the 2003 calendar year as CPI_2.

(3) In addition to the annual salary for a judge determined in accordance with subsection (2), the chief judge is entitled to be paid annually a further amount of $10,000.

(4) In addition to the annual salary for a judge determined in accordance with subsection (2), an associate chief judge is entitled to be paid annually a further amount of $5,000.

(5) A temporary judge is entitled to be paid:

(a) for the period commencing on April 1, 2000 and ending on March 31, 2003, $600 for each day and $300 for each half day in which the temporary judge is engaged in his or her duties as a judge;

(b) for the period commencing on April 1, 2003 and ending on March 31, 2004, $650 for each day and $325 for each half day in which the temporary judge is engaged in his or her duties as a judge;

(c) for the period commencing on April 1, 2004 and ending on March 31, 2005:

(i) for each day in which the temporary judge is engaged in his or her duties as a judge, the amount D_1 calculated in accordance with the following formula and rounded up to the nearest dollar:

$D_1 = \$650 + (\$650 \times C)$

where the value of C is calculated using the consumer price index for the 2003 calendar year as CPI_1 and the consumer price index for the 2002 calendar year as CPI_2; and

(ii) for each half day in which the temporary judge is engaged in his or her duties as a judge, one-half of the amount D_1 calculated in accordance with subclause (i) and rounded up to the nearest dollar; and

(d) for the period commencing on April 1, 2005:

(i) for each day in which the temporary judge is engaged in his or her duties as a judge, the amount D_2 calculated in accordance with the following formula and rounded up to the nearest dollar:

$D_2 = D_1 + (D_1 \times C)$

where:

(A) D_1 is the amount D_1 calculated pursuant to subclause (c)(i); and

(B) the value of C is calculated using the consumer price index for the 2004 calendar year as CPI_1 and the consumer price index for the 2003 calendar year as CPI_2; and

(ii) for each half day in which the temporary judge is engaged in his or her duties as a judge, one-half of the amount D_2 calculated in accordance with subclause (i) and rounded up to the nearest dollar.

(6) For the purposes of this section, if the value C calculated in accordance with subsection (1) is less than zero, it is deemed to be zero".

New section 5

5 Section 5 is repealed and the following substituted:

"Northern allowance

5(1) A judge who is designated pursuant to section 9 of the Act to reside in the Town of Meadow Lake or the Northern Town of La Ronge is entitled to be paid, in addition to the salary to which the judge is entitled:

(a) for the period commencing on April 1, 2000 and ending on March 31, 2003, remuneration in the amount of $7,000 per year; and

(b) for the period commencing on April 1, 2003, remuneration in an amount equal to 5% of the annual salary fixed pursuant to subsection 3(1).

(2) If the period for which a judge is designated pursuant to section 9 of the Act to reside in the Town of Meadow Lake or the Northern Town of La Ronge commences on a date other than April 1 in any year or ends on a date other than March 31 in any year, the remuneration to which the judge is entitled pursuant to subsection (1) shall be prorated, based on the number of months in which the judge is so designated".

Section 12 amended

6 The description of N in subsection 12(2) is amended by striking out "60" and substituting "58".

New section 14.1

7 The following section is added after section 14:

"Annuity and benefit adjustments

14.1(1) In this section:

(a) **'adjusted amount'** means an amount adjusted pursuant to subsection (4) for the purposes of clause (3)(a) or (b);

(b) **'adjustment date'** means, with respect to a calendar year, April 1 in that year;

(c) **'annuity entitlement'** means:

(i) the amount of an annuity to which a judge would be entitled pursuant to section 8 on an adjustment date if the judge had commenced receiving an annuity on the day on which the judge became a retired judge; or

(ii) if the amount described in subclause (i) was adjusted pursuant to this section on the immediately preceding adjustment date, the adjusted amount as determined on that date;

(d) **'annuity payment'** means:

(i) the amount of an annuity that is payable pursuant to section 8 to a retired judge, or the spouse of a retired judge, who has commenced receiving an annuity; or

(ii) if the amount described in subclause (i) was adjusted pursuant to this section on the immediately preceding adjustment date, the adjusted amount as determined on that date;

(e) **'benefit entitlement'** means:

(i) the amount of an additional retirement benefit to which a judge would be entitled pursuant to section 10, 11, 12 or 13 on an adjustment date if the judge had commenced receiving an additional retirement benefit on the day on which the judge became a retired judge; or

(ii) if the amount described in subclause (i) was adjusted pursuant to this section on the immediately preceding adjustment date, the adjusted amount as determined on that date;

(f) **'benefit payment'** means:

(i) the amount of an additional retirement benefit that is payable pursuant to section 10, 11, 12, 13 or 14 to a retired judge, or the spouse of a retired judge, who has commenced receiving an additional retirement benefit; or

(ii) if the amount described in subclause (i) was adjusted pursuant to this section on the immediately preceding adjustment date, the adjusted amount as determined on that date;

(g) **'pre-benefit adjustment period'** means the period beginning on the day on which a judge becomes a retired judge and ending on the day on which the retired judge commences receiving an annuity or an additional retirement benefit, as the case may be.

(2) This section applies to judges who become retired judges on or after April 1, 2003.

(3) On and from April 1, 2004, the following amounts shall be adjusted annually on the adjustment date in accordance with this section:

(a) the amount of any annuity payment or benefit payment of a retired judge or the spouse of a retired judge;

(b) the amount of any annuity entitlement or benefit entitlement of a retired judge.

(4) Subject to subsections (6) and (7), for the purposes of subsection (3), an adjusted amount is the amount A calculated on the adjustment date for a calendar year, in accordance with the following formula:

$$A = P + I$$

where:

P is the amount of the annuity payment, annuity entitlement, benefit payment or benefit entitlement to be adjusted; and

I is the amount of the adjustment, determined in accordance with subsections (6) and (7).

(5) For the purposes of subsection (6), the annual increase in the consumer price index is the value C calculated in accordance with the following formula:

$$C = (CPI_1 \div CPI_2) - 1$$

where:

CPI_1 is the consumer price index for the year immediately preceding the year in which the adjustment is being made; and

CPI_2 is the consumer price index for the year immediately preceding the year for which CPI_1 is determined.

(6) For the purposes of subsection (4):

(a) if the value of C is zero or less than zero, the amount of I is zero;

(b) if the value of C is greater than zero but not more than 0.05, the amount of I is calculated in accordance with the following formula:

$$I = P \times 0.75 \times C$$

where P is the amount of the annuity payment, annuity entitlement, benefit payment or benefit entitlement to be adjusted; and

(c) if the value of C is greater than 0.05, the amount of I is calculated in accordance with the following formula:

$$I = (P \times 0.75 \times 0.05) + [P \times 0.5 \times (C - 0.05)]$$

where P is the amount of the annuity payment, annuity entitlement, benefit payment or benefit entitlement to be adjusted.

(7) For the purposes of subsection (4), if the period for which an adjusted amount is being calculated is less than a full year, the amount I determined in accordance with subsection (5) is to be multiplied by the fraction N/12, where N is the number of months in the calendar year:

(a) in which annuity payments or benefit payments were made; or

(b) that constituted part of a pre-benefit adjustment period".

New section 16.1

8 The following section is added after section 16:

"Optional form of benefit

16.1(1) In this section, **'additional retirement benefit'** means any additional retirement benefit that may become payable to a judge pursuant to these regulations with respect to the judge's service pursuant to the Act, and includes any amount that may become payable pursuant to these regulations to any other person with respect to the judge's entitlement to an additional retirement benefit.

(2) If a judge elects, pursuant to section 10.1 of *The Provincial Court Pension Plan Regulations*, to receive an optional form of pension, the judge is entitled to receive an additional retirement benefit calculated in accordance with this section in lieu of all other additional retirement benefits to which the judge is or may become entitled.

(3) The value of the additional retirement benefit mentioned in subsection (2) is the amount ARB calculated in accordance with the following formula:

ARB = A - B

where:

(a) A is the total of:

(i) the value of the benefits, as defined in section 10.1 of *The Provincial Court Pension Plan Regulations*, to which the judge would have been entitled if the judge had not made an election pursuant to that section; and

(ii) the value of the additional retirement benefits to which the judge would have been entitled pursuant to these regulations if the judge had not made an election pursuant to section 10.1 of *The Provincial Court Pension Plan Regulations*; and

B is the value of the optional form of pension to which the judge is entitled pursuant to section 10.1 of *The Provincial Court Pension Plan Regulations*; and

(b) all of the values mentioned in clause (a) are determined:

(i) in accordance with generally accepted actuarial principles; and

(ii) using the economic and demographic assumptions contained in the most recent actuarial valuation of the pension plan established for the purposes of Part III of the Act.

(4) If a judge makes an election mentioned in subsection (2):

(a) the choices that the judge makes pursuant to subsection 10.1(5) of *The Provincial Court Pension Plan Regulations* for the purposes of that election apply, with any necessary modification, to an additional retirement benefit to which the judge is entitled pursuant to this section; and

(b) no person is entitled to any additional retirement benefit or other benefit with respect to the judge's entitlement to an additional retirement benefit, other than to an additional retirement benefit provided pursuant to this section".

Coming into force

9 These regulations come into force on the day determined in accordance with Part IV of *The Provincial Court Act, 1998.*

COMMISSION ORDER

The Provincial Court Commission, pursuant to Part IV of *The Provincial Court Act, 1998*, makes *The Provincial Court Pension Plan Amendment Regulations, 2002* in accordance with the attached Schedule.

Dated at the City of Saskatoon, the 30th day of December, 2002.

Chairperson
Provincial Court Commission

Certified True Copy

Chairperson
Provincial Court Commission

SCHEDULE

Title

1 These regulations may be cited as *The Provincial Court Pension Plan Amendment Regulations, 2002*.

R.R.S. c.P-30.11 Reg 1 amended

2 *The Provincial Court Pension Plan Regulations* are amended in the manner set forth in these regulations.

Section 5 amended

3 The description of N in subsection 5(2) is amended by striking out "60" and substituting "58".

New section 6

4 Section 6 is repealed and the following substituted:

"Pension to spouse pre-retirement

6 Where a judge dies while holding office leaving a spouse, the spouse is entitled to receive during the spouse's lifetime a pension equal to 66 2/3% of the amount of pension that the judge would have received pursuant to section 4 if the judge had retired on the day on which the judge died".

Section 8 amended

5 Section 8 is amended by striking out "section 6 or 7" **and substituting** "section 6, 7 or 10.1".

New section 8.1

6 The following section is added after section 8:

"Pension adjustments

8.1(1) In this section:

(a) **'adjusted amount'** means an amount adjusted pursuant to subsection (4) for the purposes of clause (3)(a) or (b);

(b) **'adjustment date'** means, with respect to a calendar year, April 1 in that year;

(c) **'consumer price index'** means the annual average of the all-items Consumer Price Index for Saskatchewan for a calendar year, as released by Statistics Canada;

(d) **'pension entitlement'** means:

(i) the amount of a pension to which a judge would be entitled on an adjustment date if the judge had commenced receiving a pension on the day on which the judge became a retired judge; or

(ii) if the amount described in subclause (i) was adjusted pursuant to this section on the immediately preceding adjustment date, the adjusted amount as determined on that date;

(e) **'pension payment'** means:

(i) the amount of a pension that is payable pursuant to section 4, 5, 6 or 7 to a retired judge, or the spouse of a retired judge, who has commenced receiving a pension; or

(ii) if the amount described in subclause (i) was adjusted pursuant to this section on the immediately preceding adjustment date, the adjusted amount as determined on that date;

(f) **'pre-pension adjustment period'** means the period beginning on the day on which a judge becomes a retired judge and ending on the day on which the retired judge commences receiving a pension.

(2) This section applies to judges who become retired judges on or after April 1, 2003.

(3) On and from April 1, 2004, the following amounts shall be adjusted annually on the adjustment date in accordance with this section:

(a) the amount of any pension payment of a retired judge or the spouse of a retired judge;

(b) the amount of any pension entitlement of a retired judge.

(4) Subject to subsections (6) and (7), for the purposes of subsection (3), an adjusted amount is the amount A determined on the adjustment date for a calendar year, in accordance with the following formula:

$$A = P + I$$

where:

P is the amount of the pension payment or pension entitlement to be adjusted; and

I is the amount of the adjustment, determined in accordance with subsections (6) and (7).

(5) For the purposes of subsection (6), the annual increase in the consumer price index is the value C determined in accordance with the following formula:

$$C = (CPI_1 \div CPI_2) - 1$$

where:

CPI_1 is the consumer price index for the year immediately preceding the year in which the adjustment is being made; and

CPI_2 is the consumer price index for the year immediately preceding the year for which CPI_1 is determined.

(6) For the purposes of subsection (4):

(a) if the value of C is zero or less than zero, the amount of I is zero;

(b) if the value of C is greater than zero but not more than 0.05, the amount of I is calculated in accordance with the following formula:

$$I = P \times 0.75 \times C$$

where P is the amount of the pension payment or pension entitlement to be adjusted; and

(c) if the value of C is greater than 0.05, the amount of I is calculated in accordance with the following formula:

$$I = (P \times 0.75 \times 0.05) + [P \times 0.5 \times (C - 0.05)]$$

where P is the amount of the pension payment or pension entitlement to be adjusted.

(7) For the purposes of subsection (4), if the period for which an adjusted amount is being calculated is less than a full year, the amount I determined in accordance with subsection (6) is to be multiplied by the fraction N/12, where N is the number of months in the calendar year:

(a) in which pension payments were made; or

(b) that constituted part of a pre-pension adjustment period".

New section 10.1

7 The following section is added after section 10:

"Optional form of pension

10.1(1) In this section, **'benefit'** means any pension, allowance, annuity, retirement benefit or related benefit that may become payable to a judge pursuant to these regulations with respect to the judge's service pursuant to the Act, and includes any amount that may become payable pursuant to these regulations to any other person with respect to the judge's service pursuant to the Act.

(2) A judge may elect to receive an optional form of pension calculated in accordance with this section in lieu of all other benefits to which the judge is or may become entitled.

(3) An election mentioned in subsection (2):

(a) must be made before the day on which the judge becomes entitled to receive a pension; and

(b) may be revoked at any time before the judge becomes entitled to receive a pension.

(4) The pension mentioned in subsection (2):

(a) must be equal in value, as determined in accordance with generally accepted actuarial principles and the regulations, to the benefits to which the judge would otherwise be entitled; and

(b) must be calculated using the economic and demographic assumptions contained in the most recent actuarial valuation of the pension plan.

(5) The pension mentioned in subsection (2) must provide a pension to the retired judge for life and:

(a) may provide for a pension to the surviving spouse of the retired judge that is 60%, 75% or 100% of the retired judge's pension; and

(b) may be guaranteed until the expiry of a period of 0, 5, 10 or 15 years.

(6) If a judge has made an election pursuant to subsection (2), no person is entitled to any pension or other benefit with respect to the judge's entitlement to a benefit, other than to a benefit provided pursuant to this section".

Coming into force

8 These regulations come into force on the day determined in accordance with Part IV of *The Provincial Court Act, 1998.*